

**Citation:** *R. v. Private J.D.P. Fortin*, 2006 CM 97

**Docket:** S200697

**STANDING COURT MARTIAL  
CANADA  
QUEBEC  
4<sup>TH</sup> MILITARY POLICE COMPANY  
SAINT-MALO ARMOURY, QUÉBEC**

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**Date:** 12 December 2006

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**PRESIDING: COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN**

**(Prosecutor)**

**v.**

**PRIVATE J.D.P. FORTIN**

**(Offender)**

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**SENTENCE**

**(Rendered orally)**

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**OFFICIAL ENGLISH TRANSLATION**

[1] Private Fortin, the court having accepted and recorded your admission of guilt to the 2nd charge, the court now finds you guilty of the 2nd charge and orders a stay of proceedings on the 1st charge.

[2] Private Fortin has confessed to a charge brought under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline, namely, having harassed a co-worker, a military police recruit, contrary to DAOD 5012-0. This offence was committed during their basic qualification course as military police officers during the summer of 2005 at Borden, Ontario. The facts surrounding the commission of this offence show that while returning from a heavy drinking party, when Private Fortin was the designated driver, the victim and another colleague were seated in the rear of the vehicle they had taken and they jokingly started punching each other in the shoulder. When they arrived at the base, they got out of the vehicle and the game continued. The victim, who was inebriated, was taken to his room by his colleagues. At Private Fortin's suggestion, they then decided to

handcuff the victim as a joke. Private Fortin used his own handcuffs to do so with the help of a colleague, while another colleague filmed the event. The victim asked twice to be released. Private Fortin acquiesced in his request, using the key to his handcuffs to release him. A few days later, the victim lodged a complaint with the military police. Private Fortin wrote a letter formally apologizing to the victim on the day the complaint was filed. He accepted full responsibility for his actions. The investigation was quickly concluded and Private Fortin reported his intention to plead guilty at the first opportunity.

[3] After hearing the sentencing submissions by defence counsel, the prosecution asked the court to amend its recommendation as to the sentence that this court should impose, and to substitute a joint sentencing submission to impose a fine of 200 dollars, and the court wishes to make clear that this was very responsible conduct by the prosecutor and the prosecution, and I wish to congratulate him for his professionalism, taking into account the submissions that were made by his colleague. So, as I was saying earlier, the obligation to determine an appropriate sentence rests with the court, which is entitled nevertheless to reject counsel's joint submission. However, it is settled law that the court may reject it only for compelling reasons. Therefore, the judge should accept the joint submission made by counsel unless it is held to be inappropriate or unreasonable, contrary to public order, or likely to bring the administration of justice into disrepute. This would be the case, for example, if it fell outside the range of sentences previously imposed for similar offences. In return, counsel are required to inform the judge of all the facts that support the joint submission, and the court is satisfied that this was done in the present case.

[4] As the prosecutor noted, in *R. v. Généreux* the Supreme Court of Canada held the following:

To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.

The Supreme Court emphasized that in the particular context of military discipline, breaches of discipline had to be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. However, the Supreme Court's directives do not permit a military tribunal to impose a sentence consisting of one or more punishments that would go beyond what is required in the circumstances of a particular case. In other words, any sentence imposed, whether by a military or a civil tribunal, should always constitute the minimum necessary intervention.

[5] In determining what it considers the appropriate minimum sentence in this case, the court has taken into account the circumstances surrounding the

commission of the offence as revealed in the statement of circumstances, the truth of which you have accepted, Private Fortin. I also considered the documentary evidence tendered to the court, including the joint statement of the facts, the other documents filed with the court of course, and the oral testimony by Captain Leblond and yourself. The court also took into account counsel's submissions and the cases cited in the analysis of sentencing principles.

[6] When determining a sentence that is appropriate to the accused for the mistakes he committed and the offences for which he is guilty, certain objectives are considered in light of the applicable sentencing principles. Obviously, these principles may vary slightly from case to case and the importance assigned to them is always adjusted or adapted to the circumstances of a case. Clearly, to contribute to one of the basic objectives of military discipline, the maintenance of a disciplined, operational and effective professional army, the objectives and principles may be stated as follows:

firstly, the protection of the public, and the public in this case includes the Canadian Forces;

secondly, the punishment and denunciation of the offender;

thirdly, the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences;

fourthly, the rehabilitation and reform of the offender;

fifthly, the proportionality of the sentence to the seriousness of the offences and the degree of responsibility of the offender;

sixthly, consistency in sentencing; and

finally, the court shall consider any relevant aggravating or mitigating circumstances relating to the offence and the personal situation of the offender.

[7] In this case, it is my opinion that the sentence should emphasize primarily general deterrence, and I agree with counsel that the chances of recidivism on your part, Private Fortin, are virtually non-existent. In fact, the conduct for which you are criticized is really the result of a profound lack of judgment on your part, in the context of a joke in very bad taste between military police recruits. The court shares the prosecution's opinion that we are entitled to expect much more from such individuals who are recruited to enforce the law. And the court does not think it is necessary in the circumstances of this case that the sentence emphasize the principle

of specific deterrence of the accused. The direct and indirect consequences that the verdict and the sentence have on the offender here are always relevant, of course, but the context of this case clearly shows that the wait to be tried, in and of itself — even if the offender is liable for the acts that brought him before this court — has already had a significant impact on the progress of his budding military career, although the actions of which he stands accused are relatively minor in the scale of gravity of relatively similar crimes, as the prosecutor mentioned. But it must also be said that this court does not doubt the propriety of the military authorities in exercising their discretionary power by removing the offender from the training that would have led to his being deployed to Afghanistan.

[8] In considering what sentence would be appropriate, the court took into account the following aggravating and mitigating factors. It considered the following as aggravating:

The nature of the offence and the sentence provided by Parliament. Section 129 of the *National Defence Act* provides for dismissal with disgrace from Her Majesty's service as the maximum penalty; it is an offence that is objectively serious.

Second, the degradation that you inflicted on your colleague, with the assistance of your other colleagues. You took advantage of his advanced state of inebriation in a situation where the victim was unable to defend himself, by handcuffing him and, in addition, filming it.

As to the mitigating factors, the court points to the following:

First, your admission of guilt in this court. In light of your testimony, the court considers that this confession is sincere and signifies that you regret your action. You unfortunately exceeded the permissible bounds by physically taking it out on a colleague who clearly did not seem to share your joke, even if he was severely intoxicated. The court accepts that you let yourself be carried away because you thought, at the time, that it was a joke among colleagues, when it was in fact clearly a serious error.

Second, the court notes as a mitigating aspect your performance prior to the events and what you have accomplished since then, up to now. The evidence before this court leaves no room for doubt as to your professional and personal qualities. At least, that is what the court perceives in reading your evaluations, your performance reports or rather course reports, and the testimony of Captain Leblond. It seems

that you have good potential to become an active member of the Canadian Forces and of society in general.

As to a third mitigating factor, the court notes that this is your first — and, I dare to hope, last — experience with the disciplinary and penal system.

And fourth, the court considered as a mitigating factor the lapse of time since the commission of the offence for a matter that was, when all is said and done, not very complex.

[9] For these reasons, the court accepts the joint submission of the parties and sentences you to the fine in the amount of 200 dollars, which it considers to be the minimum sentence to ensure the protection of the public and the maintenance of discipline in the circumstances. Take Private Fortin out.

COLONEL M. DUTIL, C.M.J.

Counsel:

Lieutenant-Commander M.D.M. Raymond, Regional Military Prosecutor Eastern  
Counsel for Her Majesty the Queen  
Major C.E. Thomas, Director, Defence Counsel Services  
Counsel for Private J.D.P. Fortin